

HOUSE BILL NO. 521

INTRODUCED BY FUREY, STAHL, DICKENSON, SESSO, HENRY, DOWELL, NOONAN, GUTSCHE,
LENHART, HAMILTON, BRANAE, LAMBERT, WANZENRIED, L. JONES

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A STATE CONTRACT PREFERENCE FOR FOOD PRODUCED IN MONTANA; AUTHORIZING THE PROCUREMENT OF FRESH FRUIT AND VEGETABLES BY MEANS OF OPEN PURCHASE OR CONTRACT; AUTHORIZING A PENALTY FOR A CONTRACTOR WHO FAILS TO IMPLEMENT THE PREFERENCE; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ADOPT RULES TO ADMINISTER THE PREFERENCE FOR FOOD PRODUCED IN MONTANA; AND AMENDING SECTIONS 18-1-102, 18-4-133, AND 18-7-107, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Procurement of food -- preference provisions.** (1) Each contract awarded by a state agency, as defined in 18-2-303, for food, as defined in 18-1-102, or food services must contain among its provisions a requirement that in all instances food that is produced, as defined in 18-1-102, in Montana is preferred.

(2) It is the intent of 18-1-102 and this section that, whenever possible, food that is produced in Montana that is a suitable substitute for food produced outside this state and that is comparable, but not necessarily equal, in price and comparable in quality is preferred for use in all state programs in which food or food services are a component.

(3) A contractor, as defined in 18-4-123, who fails to comply with the provisions of this section may be disqualified from bidding on or submitting a proposal for a contract offered by a state agency for food or food services for a period of 2 years.

(4) The preference provided in this section for food produced in Montana applies to contracts that involve funds obtained from the federal government unless expressly prohibited by the laws or regulations of the United States.

Section 2. Section 18-1-102, MCA, is amended to read:

"18-1-102. State contracts to lowest bidder -- reciprocity -- preference. (1) ~~It is~~ Subject to the

1 provisions of subsection (2) and in order to provide for an orderly administration of the business of the state of
2 Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works
3 of all kinds, a public agency shall award:

4 (a) a public contract for construction, repair, or public works to the lowest responsible bidder without
5 regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of
6 a nonresident bidder from any state or country that enforces a preference for resident bidders. The preference
7 given to resident bidders of this state must be equal to the preference given in the other state or country.

8 (b) a public contract for the purchase of goods to the lowest responsible bidder without regard to
9 residency. However, a resident must be allowed a preference on a contract against the bid of a nonresident if
10 the state or country of the nonresident enforces a preference for residents. The preference must be equal to the
11 preference given in the other state or country.

12 (2) Pursuant to [section 1] and in addition to the preference provided in subsection (1), a state agency,
13 as defined in 18-2-303, shall award a public contract for the purchase of food or food services to the lowest
14 responsible and responsive bidder or offeror whose bid or proposal includes food that is produced in Montana
15 and is of comparable quality, provided that the bid or proposal is not more than 10% higher than a responsible
16 and responsive bidder or offeror whose bid or proposal does not include food that is produced in Montana.

17 (3) For the purposes of [section 1] and this section, the following definitions apply:

18 (a) "Food" means articles that are normally used by humans as food or drink, including articles used
19 for components of articles that are normally used by humans as food or drink.

20 (b) "Produced" means planted, cultivated, grown, harvested, OR raised, collected, IN MONTANA, OR IF
21 PACKAGED or manufactured, IT MUST BE PACKAGED OR MANUFACTURED IN MONTANA AND THE CONTENTS MUST BE AT
22 LEAST 50% PRODUCED IN MONTANA.

23 (c) "Responsible bidder or offeror" has the meaning provided in 18-4-301.

24 (d) "Responsive bidder or offeror" has the meaning provided in 18-4-301.

25 ~~(2)~~(4) The preferences in this section apply:

26 (a) whether the law requires advertisement for bids or does not require advertisement for bids; and

27 (b) to contracts involving funds obtained from the federal government unless expressly prohibited by
28 the laws of the United States or regulations adopted pursuant to federal laws.

29 (5) The department shall adopt rules necessary to administer the preference for food produced in
30 Montana."

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2 **Section 3.** Section 18-4-133, MCA, is amended to read:

3 **"18-4-133. Purchases exempt from general requirements.** (1) When immediate delivery of articles
4 or performance of service is required by the public exigencies, the articles or service required may be procured
5 by open purchase or contract at the place and in the manner in which the articles are usually bought and sold
6 or the services engaged between individuals but under the direction of the department.

7 (2) Fresh fruit or vegetables may be procured by open purchase or contract at the place and in the
8 manner in which fresh fruit or vegetables are usually bought and sold. If the fresh fruit or vegetables are
9 procured by contract, the provisions of 18-1-102 apply.

10 ~~(2)~~(3) (a) The department may exempt the department of corrections and the department of public
11 health and human services from the provisions of this chapter for the purchase of suitable clothing by the
12 department of corrections and the department of public health and human services for residents of its institutions
13 and community-based programs.

14 (b) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the
15 resident to make a normal appearance in the community.

16 ~~(3)~~(4) When none of the bids or proposals received in response to a valid solicitation are from a
17 responsible bidder or offeror or responsive bidder or offeror, as defined in 18-4-301, the procurement officer
18 may:

19 (a) cancel and reissue the solicitation. If the procurement officer reissues the solicitation, the
20 procurement officer shall attempt to increase the number of potential vendors and may modify any specification
21 in the original solicitation.

22 (b) directly negotiate with a vendor if the procurement officer determines that a second or subsequent
23 solicitation would also be unsuccessful.

24 ~~(4)~~(5) The department shall adopt rules describing the conditions under which a procurement officer
25 may negotiate directly with a vendor. The rules must reflect the purposes described in 18-4-122.

26 ~~(5)~~(6) When a state department, agency, or official administers a grant of public funds and contracts
27 with a landowner to carry out a recreational or environmental remediation, reclamation, or conservation project
28 that benefits the state, the department may exempt the landowner from the provisions of chapter 1 and this
29 chapter if the landowner conducts the work or conducts a form of competitive procurement allowed by the terms
30 of the contract."

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2 **Section 4.** Section 18-7-107, MCA, is amended to read:

3 **"18-7-107. State printing, binding, and stationery work.** All printing, binding, and stationery work for

4 the state of Montana is subject to the preference in 18-1-102(1)(b). Federal exemptions as specified in

5 ~~18-1-102(2)(b)~~ 18-1-102(4)(b) apply."

7 NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an
8 integral part of Title 18, chapter 1, part 1, and the provisions of Title 18, chapter 1, part 1, apply to [section 1].

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